

(00-911)

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**Communication from Director of Economic Development Requesting Approval of the ACQUISITION OF REAL ESTATE SETTLEMENT OFFER for 705 S. W. ADAMS STREET for the General Store Antiques, in the Amount of \$115,000, for the DOWNTOWN STADIUM PROJECT, and Authorize the City Manager to Execute the Necessary Documents.**

Council Member Nichting stated he would be abstaining from the vote due to his ownership of property in the vicinity of the Downtown Stadium and this item pertained to the area of the Downtown Stadium.

Council Member Turner moved to approve the acquisition of a real estate settlement offer for 705 S. W. Adams Street for the General Store Antiques, in the amount of \$115,000, for the Downtown Stadium Project, and authorize the City Manager to execute the necessary documents; seconded by Council Member Morris.

Approved by roll call vote.

Yeas: Ardis, Duncan, Gibson, Grayeb, Morris, Sandberg, Spears, Thetford, Turner, Mayor Grieves - 10;

Nays: None;

Abstention: Nichting - 1.

(00-915)

**Communication from Director of Public Works Requesting Approval of the AGREEMENT OF UNDERSTANDING for MAINTENANCE AND CONSTRUCTION with the ILLINOIS DEPARTMENT OF TRANSPORTATION, and Authorize the City Manager to Sign the Agreement.**

Council Member Nichting moved to approve the Agreement of Understanding for maintenance and construction with Illinois Department of Transportation and authorize the City Manager to sign the agreement; seconded by Council Member Turner.

Approved by roll call vote.

Yeas: Ardis, Duncan, Gibson, Grayeb, Morris, Nichting, Sandberg, Spears, Thetford, Turner, Mayor Grieves - 11;

Nays: None.

(00-916)

**Communication from Director of Public Works Requesting Approval of the PUBLIC HIGHWAY BRIDGE OR UNDERPASS CROSSING AGREEMENT with the UNION PACIFIC RAILROAD COMPANY for the CHARTER OAK ROAD EXTENSION PROJECT and a NEW RAILROAD BRIDGE, and Authorize the City Manager to Sign the Agreement, Including Proceeding with the Filing of the Necessary Petition with the Illinois Commerce Commission.**

Council Member Nichting moved to approve the Public Highway Bridge or Underpass Crossing Agreement with the Union Pacific Railroad Company for the Charter Oak Road Extension Project and a new railroad bridge, and authorize the City Manager to sign the Agreement, including proceeding with the tiling of the necessary Petition with the Illinois Commerce Commission; seconded by Council Member Turner.

In discussion with Council Member Nichting, Director of Public Works Steve Van Winkle and City Engineer Gene Hewitt explained the filing date and that an order would be obtained by about April, 2001. He said the project would be bid by June, 2001, with a 12 to 15-month construction period for the first section, and the balance of the project would go under contract about a year from June. He estimated 18 to 24-months to complete the last phase of the construction of the roadway, so the project should be finished in 2004. He added 2004 was about a year ahead of the date the bridge would have to be removed, and the road would be closed completely at that time.

Motion to approve the Public Highway Bridge or Underpass Crossing Agreement with the Union Pacific Railroad Company for the Charter Oak Road Extension Project and a new railroad bridge, and authorize the City Manager to sign the Agreement, including proceeding with the tiling of the necessary Petition with the Illinois Commerce Commission was approved by roll call vote.

Yeas: Ardis, Duncan, Gibson, Grayeb, Morris, Nichting, Sandberg, Spears, Thetford, Turner, Mayor Grieves – 11;

Nays: None.

**(00-917) Communication from Corporation Counsel with ORDINANCE Approving the TRANSFER of a CABLE TELEVISION FRANCHISE from AT&T CONSUMER SERVICES to INSIGHT INDIANA.**

Council Member Nichting moved to adopt the Ordinance approving the transfer of a Cable Television Franchise from AT&T Consumer Services to Insight Indiana; seconded by Council Member Turner.

In discussion with Council Member Nichting regarding service concerns, Corporation Counsel Randy said discussions had been held with Insight Indiana and it was their intent to upgrade service and provide high speed internet access. He added the franchise agreement was limited in having authority regarding the channels that the community would have access to, but he said Insight Indiana was a smaller company and could be more responsive to the needs of their customers. He referred to the franchise fees that would be owed to the City, and he said charges had been discussed. He said he felt those issues had been adequately addressed.

In discussion with Council Member Thetford about unresolved issues with AT&T, Mr. Ray said he felt there had been sufficient dialogue regarding the issues and he felt these issues could be negotiated fairly without conditioning the approval on the resolution of these issues.

Council Member Gibson requested a letter of intent from Insight Indiana regarding programming.

Mr. Ray said the request could certainly be made, but there was a limited basis on which to approve the transfers, He said the current cable franchise expired in 2006, so hopefully there would be a better agreement at that time, but it was difficult to utilize the process to renegotiate aspects of the franchise agreement or extract changes in services.

Motion to adopt ORDINANCE NO. 15,053 approving the transfer of a Cable Television Franchise from AT&T Consumer Services to Insight Indiana was approved by roll call vote.

Yeas: Ardis, Duncan, Gibson, Grayeb, Morris, Nichting, Sandberg, Spears, Thetford, Turner, Mayor Grieves – 11;

Nays: None.

**(00-918) SITE APPROVAL for a CLASS "A" (TAVERN) LIQUOR LICENSE, with a SUBCLASS 1 (4:00 A.M.), SUBCLASS #2 (LIVE ENTERTAINMENT), for 112 S. W. JEFFERSON, with Recommendation from the Liquor Commission to Approve and the Peoria Police Department to DENY.**

Council Member Sandberg said he would be abstaining from the vote due to his business relationship with the petitioner.

## Public Highway Provisions

SECTION 1 - CONDITIONS AND COVENANTS

a) The Union Pacific makes no ~~covenant~~ or warranty of title for quiet possession or ~~against~~ encumbrances. The City ~~shall~~ not use or ~~permit~~ use of the Crossing Area for ~~any~~ purposes other than those described in ~~this~~ Agreement. Without ~~limiting~~ the foregoing, the City shall not use or ~~permit~~ use of the Crossing Area for ~~railroad~~ purposes, or for gas, oil or gasoline pipe ~~lines~~. Any ~~lines~~ constructed on the Union Pacific's property by or under ~~authority~~ of the City for the purpose of conveying electric power or ~~communications~~ incidental to the ~~City's~~ use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Union Pacific, and in such manner as not ~~adversely~~ to affect ~~communication~~ or ~~signal~~ lines of the Union Pacific or its licensees ~~now~~ or ~~hereafter~~ located upon said property. No ~~nonparty~~ shall be admitted by the City to use or occupy any part of the Union Pacific's property without the Union Pacific's written consent. ~~Nothing~~ herein shall obligate the Union Pacific to ~~give~~ such consent.

b) The Union Pacific reserves the right to cross the Crossing Area with such ~~railroad~~ tracks as may be required for its convenience or purposes in such manner as to not unreasonably interfere with its use as a public highway.

c) The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or not, and also to any renewals thereof. The City shall not ~~damage~~, destroy or interfere with the property or rights of ~~nonparties~~ in, upon or relating to the Union Pacific property, unless the City at its own expense settles with and obtains releases from such ~~nonparties~~.

d) The Union Pacific reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; also the right to cross the Crossing Area with all kinds of equipment. The Union Pacific further reserves the right to attach signal, communication or power lines to any highway facilities located upon the property, provided that such attachments shall comply with City's specifications and will not interfere with the use of the crossing Area.

e) So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Union Pacific's operating property.

f) If any property or rights other than the right hereby granted are necessary for the construction maintenance and use of the highway and its appurtenances, or for the performance of any work in connection with the Project, the City will acquire all such other property and rights at its own expense and without expense to the Union Pacific.

SECTION 2 - CONSTRUCTION OF PUBLIC HIGHWAY BRIDGE and REMOVAL OF EXISTING GRADE SEPARATION OVER BIG HOLLOW ROAD

a) The City, at its own expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Union Pacific upon request with satisfactory evidence that such authority has been obtained.

b) Except as may be otherwise specifically provided herein, the City, at its own expense, will furnish all necessary labor, material and equipment, and shall construct and complete the highway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Union Pacific within its right-of-way), and all necessary and proper drainage

facilities, guard rails or barriers, and right of way fences between the highway and the Union Pacific tracks. Upon completion of the Project the City shall remove from the Union Pacific's property all temporary structures and false work and will leave the Crossing Area in a condition satisfactory to the Union Pacific.

c) The Union Pacific will receive no ascertainable benefit from the construction of the Project, and, except as may be specifically provided herein, shall not be required to pay or contribute any part of the cost thereof. If the Project is to be financed in whole or in part by Federal funds, all construction work by the City shall be performed, and any reimbursement to the Union Pacific for work it performs shall be made, in accordance with the applicable Federal acts, regulations, and this Agreement.

d) All construction work of the City upon the Union Pacific's property (including, but not limited to, construction of the highway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Vice President-Engineering Services of the Union Pacific or his authorized representative and in accordance with detailed Plans and Specifications prepared by and at the expense of the City, and approved in writing by the Union Pacific's Vice President-Engineering Services.

e) All construction work of the City shall be performed diligently and completed within a reasonable time, and in any event within three (3) years from the effective date of this Agreement, or within such further period of time as may be specified in writing by the Union Pacific's Vice President-Engineering Services. No part of the Project shall be suspended discontinued or unduly delayed without the Union Pacific's written consent, and subject to such reasonable conditions as the Union Pacific may specify. It is understood that the Union Pacific's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damage on account of any delay shall be made against the Union Pacific.

f) If the Project includes construction of a structure over which trains are to be operated or for which the Union Pacific has any responsibility for maintenance, the City shall furnish the Union Pacific permanent reproducible prints and electronic copy of all design and shop drawings as soon as possible after approval by the Vice President-Engineering Services of the Union Pacific or his authorized representative. Upon completion of construction, the City shall furnish the Union Pacific two sets of "as constructed" prints and, in addition, upon request of the Vice President-Engineering Services of the Union Pacific, "as constructed" permanent reproducible prints of all or any portion of the structure.

### SECTION 3 - INJURY AND DAMAGE TO PROPERTY

If the City, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the City is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Union Pacific or of any other person lawfully occupying or using the property of the Union Pacific, such property shall be replaced or repaired by the City at the City's own expense, or by the Union Pacific at the expense of the City, and to the satisfaction of the Union Pacific's Vice President-Engineering Services.

### SECTION 4 - PAYMENT FOR WORK BY THE UNION PACIFIC

a) Bills for work and materials shall be paid by the City promptly upon receipt thereof. The Union Pacific will submit to the City current bills for flagging and other protective services and devices during progress of the Project. The Union Pacific will submit final billing for flagging and other protective services within one hundred and twenty (120) days after completion of the Project, provided the City advises the Union Pacific of the commencement of the 120-day period by giving the Union Pacific written notification of completion of the Project.

b) The Union Pacific may contract for the performance of any of its work by other than Union Pacific forces. The Union Pacific shall notify the City of the contract price within ninety (90) days after it is awarded. Unless the Union Pacific's work is to be performed on a fixed price basis, the City shall reimburse the Union Pacific for the amount of the contract.

#### SECTIONS - MAINTENANCE

The Project involves a public highway crossing under the Union Pacific's tracks and defined as an "Underpass":

- 1) The City shall, at its own sole expense, maintain and repair and cause to be maintained and repaired the entire structure of the highway at the Underpass and all highway approaches thereto.
- 2) The City shall, at its own sole expense, maintain and repair, and cause to be maintained and repaired, the entire substructure of the Underpass including the wingwalls, piers, appurtenances, highway approaches and retaining walls within the Company's right-of-way.

#### SECTION 6 - CHANGES IN GRADE

If at any time the Union Pacific shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track or tracks located on the Crossing Area, the City shall, at its own expense, conform the public highway in the Crossing Area to conform with the change of grade of the trackage.

#### SECTION 7 - REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Union Pacific convenience or on account of improvements for either railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation Agreement or by the order of a competent authority before the change or rearrangement is undertaken.

#### SECTION 8 - SAFETY MEASURES: PROTECTION OF Union Pacific COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Union Pacific's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the City that the work will be performed in a safe manner and in conformity with the follow-trig standards:

- a) Definitions. All references in this Agreement to the City shall include the City's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of Union Pacific property.
- b) Compliance With Laws. The City shall comply with all applicable federal state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Union Pacific and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Union Pacific Railroad Administration regulations shall be followed when work is performed on the Union Pacific's Crossing Area. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Union Pacific, the City shall reimburse and indemnify the Union Pacific for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Union Pacific, to defend such action free of cost, charge, or expense to the Union Pacific.

c) No Interference or Delays. The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with hinder or delay maintenance or operation of the Union Pacific's tracks or facilities, or any communication or signal lines, installations or my appurtenances thereof, or the operations of others lawfully occupying or using the Union Pacific's property or facilities.

d) Supervision. The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Union Pacific may be responsible, or to property of the Union Pacific. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Union Pacific's approval of the Plans and Specifications, or by the Union Pacific's collaboration in performance of any work or by the presence at the work site of the Union Pacific's representatives, or by compliance by the City with any requests or recommendations made by such represent&s. If a representative of the Union Pacific is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Union Pacific's property and operations.

e) Suspension of Work. If at any time the City's engineers or the Vice President-Engineering Services of the Union Pacific or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

f) Removal of Debris. The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Union Pacific; and any such material and debris shall be promptly removed from the Union Pacific's property by the City at the City's own expense or by the Union Pacific at tie expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cost upon the Union Pacific's property during snow removal from the Crossing Area.

g) The City shall not discharge any explosives on or in the vicinity of the Union Pacific's property without the prior consent of the Union Pacific's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Union Pacific's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Union Pacific's property or facilities. For the purposes hereof, the "vicinity of the Union Pacific's property" shall be deemed to be any place on the Union Pacific's property or in such close proximity to the Union Pacific's property that the discharge of explosives could cause injury to the Union Pacific's employees or other persons, or cause damage to or interference with the facilities or operations on the Union Pacific's property. The Union Pacific reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Union Pacific, in the Union Pacific's sole discretion, may deem to be necessary, desirable or appropriate. In addition to any conditions, restrictions or limitations as may be specifically imposed:

1) Unless the Union Pacific's Vice President-Engineering Services agrees otherwise, the City shall provide no less than 48 hours' written notice, excluding weekends and holidays, before discharging any explosives.

2) Any explosives loaded in holes or placed or otherwise readied for discharge on a day shall be discharged on the same day during daylight hours, and at mutually acceptable times.

3) The City, at its own expense, shall take all precautionary measures and construct all temporary shelters necessary to guard against danger of damage, destruction or interference arising out of or connected with any blasting or any transportation, handling, storage, security or use of explosives.

4) The City shall require explosives to be transported, handled, stored or otherwise secured and used in a manner satisfactory to the Union Pacific and in accordance with local,

state and Federal laws, rules and regulations. including. without limitation, United States Department of Labor, Bureau of Labor Standards. Safety and Health Regulations for Construction, 29 CFR Part 1516, Subpart U ~ "Blasting and the Use of Explosives"; and Occupational Safety and Health Administration Occupational Safety and Health Standards, 29 CFR Part 1910, Subpart H ~ "Hazardous Materials".

h) Obstructions to View. Except as otherwise specifically provided herein the City shall not cause or permit the view along the tracks of the Union Pacific to be obstructed, nor place any combustible material on the Crossing Area, nor erect any structures thereon. If public law or regulation requires control or removal of weeds or vegetation on each side of the Crossing Area, the City will perform such control or removal work without expense to the Union Pacific or, if the City may not lawfully perform the control or removal work reimburse the Union Pacific for the cost of performing such control or removal. If the crossing is not equipped with automatic train activated warning devices with gate arms:

1) The City shall control or remove weeds and vegetation within and on each side of the Crossing Area so that the view of approaching motorists to approaching trains is not obstructed by weeds or vegetation; and

2) Insofar as it may lawfully may do so, the City will not permit non-parties to construct sight obstructing buildings or other permanent structures on property adjacent to the right-of-way.

i) Excavation. The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock or impair or endanger the clearance between existing or new slopes and the tracks of the Union Pacific. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Union Pacific's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Union Pacific's Vice President-Engineering Services to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Union Pacific's operations in the vicinity.

j) Drainage. The City, at the City's own expense, shall provide and maintain suitable facilities for draining the highway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Union Pacific. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Union Pacific's culvert and drainage facilities). so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Union Pacific or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.

k) Notice. Before commencing any work the City shall provide 46 hours prior written notice (excluding weekends and holidays) to the Union Pacific's Manager-Track Maintenance.

l) Fiber Optic Cables. Fiber optic cable systems may be buried on the Union Pacific's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City shall telephone the Union Pacific at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Union Pacific's Crossing Area to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Union Pacific's Crossing Area.

SECTION 9 - INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the City, or by Agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the City shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed

SECTION 10 - OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Union Pacific and any other railroad company lawfully using the Union Pacific's property or facilities.

SECTION 11 - REMEDIES FOR BREACH OR NONUSE

a) If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Union Pacific, in addition to any other rights and remedies; may perform any work which in the judgment of the Union Pacific is necessary to place the highway and appurtenances in such condition as will not menace, endanger or interfere with the Union Pacific's facilities or operations or jeopardize the Union Pacific's employees; and the City will reimburse the Union Pacific for the expenses thereof.

b) Nonuse by the City of the Crossing Area for public roadway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Union Pacific, work a termination of this Agreement and of all rights of the City hereunder.

c) The City will surrender peaceable possession of the Crossing Area upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 12 - MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the City and the Union Pacific and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Union Pacific of any default by the City shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the City and the Union Pacific and cancel and supersede any prior negotiations, understandings or Agreements, whether written or oral, with respect to the Project and the work or any part thereof.



## Insurance Provisions

The City at its sole cost and expense and at the sole cost and expense of the City's Contractor and/or Subcontractor, procure the following kinds of insurance and promptly pay when due all premiums for that insurance. The Railroad Protective Insurance described in Paragraph D below only needs to be obtained and kept in force during the duration of construction or major reconstruction of the highway and Underpass located on the Crossing Area. The other insurance coverage described in Paragraphs A, B and C below shall be kept in force by the City during the life of this Agreement.

- A. General Public Liability insurance providing bodily injury, including death personal injury and property damage coverage with a combined single limit of at least \$5,000,000 each occurrence or claim and a general aggregate limit of at least \$10,000,000. This insurance shall provide Broad Form Contractual Liability covering the indemnity provisions contained in this Agreement Underground Hazard, Broad Form Property Damage, a waiver of governmental immunity (ISO Form GL 24 14 or equivalent), severability of interests and name Union Pacific as an additional insured with respect to all liabilities arising out of City's obligation to Union Pacific in this Agreement. Coverage shall be purchased on an "occurrence" basis.
- B. Automobile Public Liability insurance providing bodily injury and property damage with a combined single limit of at least \$5,000,000 each occurrence or claim. This insurance shall provide contractual liability by endorsement ISO Form CA 00 25 or equivalent covering all motor vehicles including hired and non-owned, mobile equipment to the extent it may be excluded from general liability insurance, severability of interests and name Union Pacific as an additional insured with respect to all liabilities arising out of City's obligation to Union Pacific in this Agreement.
- C. Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the state(s) affected by this Agreement and Employers' Liability with a limit of at least \$5,000,000. Also compliance with all laws of states which require participation in their state workers' compensation fund.
- D. Railroad Protective Liability insurance naming Union Pacific as insured with a combined single limit of \$5,000,000 per occurrence with a \$10,000,000 aggregate. The policy form shall be AAR-ASHTO with broad form coverage for 'Physical Damage to Property' (ISO Form GL 00 30) or as revised ISO-RIMA (Form CG 00 35) and include pollution arising out of fuels and lubricants brought to the job site (ISO Form CG 2831 or equivalent).

The City, its Contractor(s) and Subcontractor(s) hereby waive their right of subrogation, as respects the above insurance policy(ies), against Union Pacific for payments made to or on behalf of employees of City or its agents or its Contractor(s) and Subcontractor(s) and for loss of their owned or leased property or property under their care, custody and control while on or near Union Pacific's right-of-way or other real property. City's, and its Contractor's and Subcontractor's insurance shall be primary with respect to any insurance carried by Union Pacific.

City and its Contractor(s) and Subcontractor(s) shall furnish to Union Pacific certificate(s) of insurance evidencing the required coverage and endorsement(s) and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify Union Pacific in writing of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Union Pacific or with a current Best's Insurance Guide Rating of B and Class VII or better. Such insurance company shall be authorized to transact business in the state(s) affected by this Agreement.

## General Provisions

section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

a. The City agrees that either the City or its Contractor(s) and/or Subcontractor(s) shall notify the Railroad Representative at least 10 working days in advance of the City's or its Contractor(s) and/or Subcontractor(s) commencement of work and at least 5 working days in advance of proposed performance of any work by the City or its Contractor(s) and/or Subcontractor(s) in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. No work of any kind shall be performed, and no person, equipment, machine, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such 5-day notice, the Railroad Representative will determine and inform the City or its applicable Contractor(s) and/or Subcontractor(s) whether a flagman need be present and whether the City or its Contractor(s) and/or Subcontractor(s) need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the Railroad, such services will be provided at City's expense with the understanding that if the Railroad provides any flagging or other services, the City shall not be relieved of any of its responsibilities or liabilities set forth herein. City shall promptly pay to Railroad all charges connected with such services within 30 days after presentation of a bill therefor.

b. The rate of pay per hour for each man will be the prevailing hourly rate in effect for an eight hour day for the class of men used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health & welfare, supplemental sickness, Railroad Retirement & UC, supplemental pension, Empl. Liability & Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect on the day of execution of this Agreement. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between the railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the City shall pay on the basis of the new rates and charges.

c. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the City and/or its Contractor(s) and/or Subcontractor(s) may not be working during such time.

Section 2. IMITATION AND SUBORDINATION OF RIGHTS GRANTED

(a) The Project, this Agreement and the Temporary Construction easement and the Permanent Easement are all subject and subordinate to the prior and continuing right and obligation of the Union Pacific to use and maintain its entire property including the right and power of the Union Pacific to construct, maintain, repair, renew, use, operate, change, modify or relocate Union Pacific tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Union Pacific without liability to the City or City's Contractor(s) and/or Subcontractor(s) or to any other party for compensation or damages.

(b) The Project, this Agreement and the Temporary Construction easement and the Permanent Easement are all subject to all outstanding superior rights (including those in favor of licensees and lessees of the Union Pacific's property, and others) and the right of the Union Pacific to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3.

NO INTERFERENCE WITH UNION PACIFIC'S OPERATION.

No work performed by the City and City's Contractor(s) and/or Subcontractor(s) shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Union Pacific its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Union Pacific representative. Nothing shall be done or suffered to be done by the City and City's Contractor(s) and/or Subcontractor(s) at any time that would in any manner impair the safety thereof. When not in use, the City's and City's Contractor(s)'s and/or Subcontractor(s)'s machinery and materials shall be kept at least 50 feet from the centerline of Union Pacific's nearest track, and there shall be no crossings of Union Pacific's tracks except at existing open public crossings.

Section 4. PERMITS.

Prior to beginning any work, the City's and City's Contractor(s) and/or Subcontractor(s), at its sole expense, shall obtain all necessary permits to perform any work contemplated by this Agreement.

Section 5. MECHANICS LIENS.

The City's and City's Contractor(s) and/or Subcontractor(s) shall pay in full all persons who perform labor or provide materials for the work to be performed by City or City's Contractor(s) and/or Subcontractor(s). The City and City's Contractor(s) and/or Subcontractor(s) shall not permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against any property of the Union Pacific for any such work performed. The City and City's Contractor(s) and/or Subcontractor(s) shall indemnify and hold harmless the Union Pacific from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. It is understood that this Agreement may be recorded in the City in which the work and the Project is to be performed and such recording shall serve as public notice that no Contractor, Subcontractor or Materialman shall be permitted to file any notice of a mechanic's or materialmen's lien or permit or suffer any mechanic's lien or materialmen's lien on the property of the Union Pacific to the extent permitted by Illinois law.

Section 6. FIBER OPTIC CABLE SYSTEMS.

In addition to the liability terms elsewhere in this Agreement, the City and City's Contractor(s) and/or Subcontractor(s) shall indemnify and hold the Union Pacific harmless against and from all cost, liability and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the City or City's Contractor(s), and/or Subcontractor(s), agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Union Pacific's property, and (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Union Pacific's property. The City and City's Contractor(s) and/or Subcontractor(s) shall not have or seek recourse against Union Pacific for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Union Pacific's property or a customer or user of services of the fiber optic cable on Union Pacific's property.

Section 7. COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, the City and City's Contractor(s) and/or Subcontractor(s) shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City and City's Contractor(s) and/or Subcontractor(s) shall use only such methods as are consistent with safety, both as concerns the City and City's Contractor(s) and/or Subcontractor(s), the City and City's Contractor(s)'s and/or Subcontractor(s)'s agents and employees, the officers, agents, employees and property of the Union Pacific and the public in general. The City and City's Contractor(s) and/or Subcontractor(s) (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad

Administration regulations shall be followed when work is performed on the Union Pacific's property. If any failure by the City or City's Contractor(s) and/or Subcontractor(s) to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Union Pacific, the City and City's Contractor(s) and/or Subcontractor(s) shall reimburse and indemnify the Union Pacific for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City and City's Contractor(s) and/or Subcontractor(s) further agrees in the event of any such action, upon notice thereof being provided by the Union Pacific, to defend such action free of cost, charge, or expense to the Union Pacific.

## Section 8. SAFETY INSTRUCTIONS.

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this Agreement. As reinforcement and in furtherance of overall safety measures to be observed by the City and City's Contractor(s) and/or Subcontractor(s) (and not by way of limitation), the following special safety rules shall be followed:

(a) The City and City's Contractor(s) and/or Subcontractor(s) shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. The City and City's Contractor(s) and/or Subcontractor(s) shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that maybe injured on the job site. The City and City's Contractor(s) and/or Subcontractor(s) shall promptly notify the Union Pacific of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The City and City's Contractor(s) and/or Subcontractor(s) shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Union Pacific to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work by an employee.

(b) The employees of the City and City's Contractor(s) and/or Subcontractor(s) shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective footwear. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes or other shoes that have thin soles or heels that are higher than normal. In addition, the City and City's Contractor(s) and/or Subcontractor(s) shall require its employees to wear personal protective equipment as specified by Union Pacific rules, regulations or Union Pacific officials overlooking the work at the job site. In particular, the protective equipment to be worn shall be:

(1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hard hats be affixed with City's and City's Contractor(s)'s and/or Subcontractor(s)'s company logo or name.

(2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.: and

(3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

(c) AU heavy equipment provided or leased by the City or City's Contractor(s) and/or Subcontractor(s) shall be equipped with audible back-up warning devices. If in the opinion of the Union Pacific Representative any of City's and City's Contractor(s)'s and/or Subcontractor(s)'s equipment is unsafe for use on the Union Pacific's right-of-way, the City's and City's Contractor(s) and/or Subcontractor(s), at the request of the Union Pacific Representative, shall remove such equipment from the Union Pacific's right-of-way.

Section 9.

INDEMNITY.

(a) As used in this Section, "Union Pacific" includes other railroad companies using the Union Pacific's property at or near the location of the City's or City's Contractor(s)'s and/or Subcontractor(s)'s installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Union Pacific's officers, agents, and employees, the City and City's Contractor(s)'s and/or Subcontractor(s)'s officers, agents, and employees, as well as any other person); and (b) damage to or loss or destruction of property whatsoever (including the City's and City's Contractor(s)'s and/or Subcontractor(s)'s property, damage to the roadbed, tracks, equipment, or other property of the Union Pacific, or property in its care or custody).

(b) As a major inducement and in consideration of the Temporary Construction Easement(s) and Permanent Easement(s) and permission herein granted, the City shall include in any and all agreements entered into with its Contractor's covering the Project a provision requiring that the City's Contractor(s) and/or Subcontractor(s) shall indemnify, hold harmless and defend to the extent allowed by law the Union Pacific from any Loss which is due to or arises from any cause and is associated in whole or in part with the Project under this Agreement, a breach of the Agreement or the failure to observe the health and safety provisions herein, or any activity or omission arising out of performance or nonperformance of this Agreement; except to the extent caused by the negligence or fault of the Union Pacific.

(c) Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings, resulting from any employee's suit against either party pursuant to any such Act(s), be relied upon or used by either party in any attempt to assert common law liability against the other.

Section 10. RESTORATION OF PROPERTY.

In the event the Union Pacific authorizes the City or City's Contractor(s) and/or Subcontractor(s) to take down any fence of the Union Pacific or in any manner move or disturb any of the other property of the Union Pacific in connection with the work to be performed by the City or City's Contractor(s) and/or Subcontractor(s), then in that event the City and City's Contractor(s) and/or Subcontractor(s) shall, as soon as possible and at City's or City's Contractor(s)'s and/or Subcontractor(s)'s sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the City's and City's Contractor(s) and/or Subcontractor(s) shall indemnify and hold harmless the Union Pacific, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, arising from the taking down of any fence or the moving or disturbance of any other property of the Union Pacific. Such restoration shall include but not be limited to installation during and after disturbance activities of, rip-rap, erosion control, seeding, hydro mulching, sodding and shoring.

Section 11. WAIVER OF BREACH.

The waiver by the Union Pacific of the breach of any condition, covenant or Agreement herein contained to be kept, observed and performed by the City or City's Contractor(s) and/or Subcontractor(s) shall in no way impair the right of the Union Pacific to avail itself of any subsequent breach thereof.

Section 12.

ASSIGNMENT - SUBCONTRACTING.

Neither the City's nor City's Contractor(s) and/or Subcontractor(s) shall assign, sublet or subcontract this Agreement, or any interest therein, without the written consent of the Union Pacific and any attempt to so assign, sublet or subcontract without the written consent of the Union Pacific shall be void. If the Union Pacific gives the City or City's Contractor(s) and/or Subcontractor(s) permission to subcontract all or any portion of the work herein described, the City is and shall remain responsible for all work of Contractor(s) and Subcontractor(s) and all work of Contractor(s) and Subcontractor(s) shall be governed by the terms of this Agreement.

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